

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Develop Additional
Methods to Implement the California Renewables
Portfolio Standard Program.

Rulemaking 06-02-012
(Filed February 16, 2006)

**COMMENTS OF AGLET CONSUMER ALLIANCE
ON PROPOSED DECISION OF ALJ SIMON**

April 15, 2009

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Pursuant to Rule 14.3 *et seq.* of the Commission's Rules of Practice and Procedure, Aglet Consumer Alliance (Aglet) submits these opening comments on the proposed decision (PD) of Administrative Law Judge (ALJ) Anne Simon concerning tradable renewable energy credits (TRECs). (Agenda ID #8406.) Chief ALJ Karen Clopton sent the PD to parties of record on March 26, 2009. Opening comments are due April 15, 2009. Aglet will file this pleading electronically on the due date.

The PD strikes a fair balance among the ratepayer economic interests, the Commission's Renewables Portfolio Standard (RPS) goals, and compliance concerns expressed by the investor-owned utilities (IOUs). Therefore, Aglet supports the PD with the modifications discussed herein.

There is a danger that pending state legislation will have the effect of negating some of the PD's substantive content. Aglet discusses state legislation in Section 2 below.

1. Background

Throughout this proceeding, Aglet has opposed the use of TRECs for compliance purposes by the IOUs. Although Aglet still has serious concerns about TRECs, the PD addresses some of Aglet's concerns by establishing a temporary 5% limit on the use of TRECs for compliance purposes.

The PD states:

"Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) may use TRECs for no more than 5% of their APT [annual procurement target]. Not less than 24 months after the imposition of this limit, any party may request that the Commission modify or eliminate the limit." (PD, p. 71, Ordering Paragraph 15.)

2. California State Legislation

The California legislature is now considering three bills which would limit the use of RECs by load serving entities. The bills are Assembly Bill (AB) 64, Senate Bill (SB) 14, and SB 805.¹ Of the three, SB 14 is closest to becoming law. On March 31, 2009 the Senate passed SB 14 by a vote of 21-16 and sent the bill to the Assembly. On April 2, the Assembly Utilities and Commerce Committee recommended AB 64 by a vote of 8-5 and referred the bill to the Assembly Committee on Natural Resources. On March 25, SB 805 was set for hearing on April 21 before the Senate Energy, Utilities, and Communications Committee.

SB 14, Section 16(a)(3), requires that RECS can only be used for compliance purposes if, "The electricity is delivered to a retail seller, the Independent System Operator, or a local publicly owned electric utility."

AB 64, Article 5, Section 980(b), allows that, "A retail seller or local publicly owned electric utility may meet up to 10 percent of its renewables portfolio standard procurement requirements with renewable energy credits from nondeliverable renewable energy resources that are certified by the Energy Commission pursuant to Article 4."

SB 805, Section 3(a)(4), requires:

"In soliciting and procuring eligible renewable energy resources, each electrical corporation shall offer contracts of no less than 10 years in duration, unless the commission approves of a contract of shorter duration. A retail seller may meet up to 25 percent of its renewables portfolio standard procurement requirements with unbundled renewable energy credits from eligible renewable energy resources within the region of the WECC [Western Electricity Coordinating Council]." (Emphasis added.)

¹ Available electronically at <http://www.legislature.ca.gov/port-bilinfo.html>.

3. TREC Price Cap

The PD states, "The possible negative consequences of TRECs, such as high payments to existing facilities, market manipulation, or high prices, can be mitigated or removed by the rules this Commission sets for the use of TRECs and the design of the TREC market." (PD, pp. 14-15.)

Although it is theoretically possible that the Commission will establish rules to mitigate high prices, the PD fails to do so. The PD establishes a maximum price cap of \$50/REC for procurement of RECs by the IOUs. (PD, p. 65, Finding of Fact 10, and p. 71, Ordering Paragraph 16.)

The PD acknowledges, "Information on recent TREC prices in markets in other states, provided by Aglet in its supplemental comments, shows that prices vary from a low range (less than \$5/REC) through a few in the range of \$25/REC, to, in one instance, a high of \$48/REC." (PD, p. 38, footnote 58.)

Thus, the PD sets a maximum price for RECs which is higher than the highest price in any other state. The PD explains its reasoning by stating:

"On the other hand, a price cap of \$50/REC is connected to the noncompliance penalty amount. It is the highest economically rational price for a TREC that would not shift the costs of noncompliance from utility shareholders to ratepayers. The penalty structure is, however, intended to put the burden of IOUs' noncompliance with RPS requirements on shareholders, not ratepayers. It would be undermined by allowing utilities to pay more than the penalty amount for TRECs." (PD, p. 42.)

Even if the Commission believes that the price cap must be equal to the noncompliance penalty, it is not necessary to set the price cap at \$50/REC. The Commission should lower both the noncompliance penalty and the price cap to a more reasonable level of \$35/megawatt-hour and \$35/REC respectively. The PD notes, "The Straw Proposal suggests that 'reasonable costs' should be capped at

\$35.00 per REC for the cost of RECs used for RPS compliance by RPS-obligated utilities.” (PD, p. 37.)

The PD also establishes a new standard of evaluation in this proceeding, based on whether or not a party’s proposals would lead to the development of an integrated and liquid TREC market. In regard to price cap proposals, the PD states:

“Aglet suggests a more complex calculation that would impose a significantly lower cap, but only on IOU cost recovery for TRECs purchased from unregulated LSEs. Aglet's suggestion is not consistent with an integrated, liquid TREC market, and does not account for the participation of other, non-LSE entities in the TREC market.” (PD, p. 30, footnote 60.)

The Public Utilities Code does not require the Commission to develop new markets. However, Public Utilities Code §451 does require the Commission to ensure that all rates are just and reasonable. The PD does not reject any proposal for fear that the proposal will not lead to just and reasonable rates. Therefore, the last sentence of footnote 60 should be deleted.

4. Conclusion

The Commission should adopt the PD with the revisions set forth in the Appendix to this pleading.

* * *

Consultant L. Jan Reid drafted this pleading on Aglet’s behalf.

Dated April 15, 2009 at Sebastopol, California.

/s/

James Weil, Director

APPENDIX

Revised Text

Page 39, footnote 60. BVES and Central California Power also support it. Aglet suggests a more complex calculation that would impose a significantly lower cap, but only on IOU cost recovery for TRECs purchased from unregulated LSEs.

~~Aglet's suggestion is not consistent with an integrated, liquid TREC market, and does not account for the participation of other, non-LSE entities in the TREC market.~~

Page 42. ~~On the other hand, a price cap of \$50/REC is connected to the noncompliance penalty amount. It is the highest economically rational price for a TREC that would not shift the costs of noncompliance from utility shareholders to ratepayers. The penalty structure is, however, intended to put the burden of IOUs' noncompliance with RPS requirements on shareholders, not ratepayers. It would be undermined by allowing utilities to pay more than the penalty amount for TRECs.~~

Therefore, we adopt a temporary price cap of \$3550/REC (the penalty amount translated from MWh to RECs). This means that an IOU may not use for RPS compliance a TREC for which it paid more than \$3550.00, on a levelized basis.

Page 43. The assigned Commissioner or assigned ALJ in R.08-08-009 or its successor is authorized to issue any rulings needed to effectuate any review of the ~~\$50/REC~~ price cap on TRECs used for RPS compliance by any IOU.

Revised Finding of Fact

10. In order to provide temporary protections for ratepayers without damaging the basic structure of the TREC market or undermining the financial incentives for new renewable construction that are among the longer-term benefits of a TREC market, it is reasonable to impose a reviewable price cap of \$~~3550~~/REC for TREC purchases by IOUs.

Revised Ordering Paragraph

16. No TRECs for which the levelized amount paid is greater than \$3550.00 per TREC may be used for RPS compliance by any IOU. Not less than 24 months after the imposition of this price cap, any party may request that the Commission modify or eliminate the price cap.

VERIFICATION

I, James Weil, represent Aglet Consumer Alliance and am authorized to make this verification on the organization's behalf. The statements in the foregoing document are true to the best of my knowledge, except for those matters that are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Dated April 15, 2009 at Sebastopol, California.

/s/

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CERTIFICATE OF SERVICE

I certify that I have by electronic mail this day served a true copy of the original attached "Comments of Aglet Consumer Alliance on Proposed Decision of ALJ Simon" on all parties of record in this proceeding or their attorneys of record.

I will serve paper copies of the pleading on Assigned Commissioner Michael Peevey, Administrative Law Judge Anne Simon, and six persons or firms that did not provide the Commission with an e-mail address: AOL Utility Corp., 12752 Barrett Lane, Santa Ana, CA 92705; Larry Eisenstat and Richard Lehfelddt, Dickstein Shapiro LLP, 1825 Eye Street, NW, Washington, DC 20006; Donald Furman, Iberdrola Renewables, 1125 NW Couch St. #700, Portland, OR 97209; Jan Hamrin, Center for Resource Solutions, PO Box 29512, San Francisco, CA 94129; and Sara O'Neill, Constellation NewEnergy, Inc., One Market Street, Spear Tower, 36h Floor, San Francisco, CA 94105.

Dated April 15, 2009, at Sebastopol, California.

/s/

James Weil